

RESUBMITTAL OF REGULATION #2556

**PREVIOUS VERSION WAS DISAPPROVED
AT IRRC'S AUGUST 21, 2008 PUBLIC
MEETING.**

**THE ORIGINAL FINAL-FORM REGULATION
CAN NOW BE FOUND IN RELATED
DOCUMENTS.**

Regulatory Analysis Form

This space for use by IRRC

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Department of Labor and Industry
Office of Deaf and Hard of Hearing

(2) I.D. Number (Governor's Office Use)

12-71

IRRC Number: #2556

(3) Short Title

General Provisions

(4) PA Code Cite

34 Pa. Code Chapter 501

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sharon Behun, Director, Office of Deaf and Hard of Hearing; 717-783-4912

Secondary Contact: William Gannon, Executive Director, Office of Vocational Rehabilitation: 717-787-7312

(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

The Department of Labor and Industry (Department), Office of Deaf and Hard of Hearing (ODHH) proposes these regulations to implement the provisions of the Sign Language Interpreter and Transliterator State Registration Act (Act), the act of July 2, 2004 (P.L. 492, No. 57).

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Department proposes these regulations under the authority contained in the Act (63 P.S. §§ 1725.3(4), 1725.5(a)(a)(1)(iii), (a)(2)(v), (d), 1725.8(a)(6), and 1725.9(c)(1)).

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The proposed regulations are required to implement the Act. The regulations are not required under court order or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Act went into effect July 1, 2005. The Act requires the Office to register sign language interpreters and transliterators. The proposed regulations identify the examinations approved by the Office which test knowledge and proficiency in interpreting and transliterating required for registration by section 5(a)(1)(iii) and provide guidance to sign language interpreters and transliterators and individuals who utilize the services of interpreters and transliterators relating to their duties and obligations under the Act. The proposed regulations also establish the procedures for the filing and investigation of complaints and the imposition of administrative fines and penalties for violations and the holding of hearings concerning alleged violations.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation would lead to confusion between how the Office operates and the expectations of the sign language interpreter and transliterators community and the customers they serve. The regulations are required to implement the Act's provisions.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Sign language interpreters, transliterators and individuals who are deaf and hard of hearing who utilize the services of interpreters and transliterators will benefit from these regulations. The proposed rulemaking will allow the Office to effectively administer the state registration process and provide clarity to the general public regarding the requirements of the Act.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one will be adversely affected by the regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The following persons, groups or entities will be required to comply with the regulations: approximately 250 sign language interpreters and transliterators and employees of the Office.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Since July 2004, the Office has met with numerous organizations whose membership will be affected by the proposed regulations. The Office provided information regarding the regulatory process, answers to frequently asked questions regarding the requirements of the Act and received recommendations from the affected community.

The Office met and consulted with the following organizations: the Pennsylvania Registry of Interpreters for the Deaf; Pennsylvania Society for Advancement of the Deaf, Erie County Council for the Deaf, Pennsylvania Training and Technical Assistance Network, NE Technical Assistance Consortium, Office of Deaf and Hard of Hearing Advisory Council, Advisory Council for Persons who are Deaf and Hard of Hearing, Pennsylvania Department of Corrections, Pennsylvania Department of Education, Bureau of Special Education, Berks Deaf and Hard of Hearing Services Board, Office of Equal Employment, Tobyhanna Army Depot, American Sign Language Teacher Association, Pittsburgh Hearing and Deafness Services, Pittsburgh Association for the Deaf, NW Technical Assistance Consortium and the Educational Resources for Children with Hearing Loss.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Currently the only anticipated cost for the regulated community is the \$100.00 registration fee per interpreter to be paid every other year. No savings in cost are anticipated for the regulated community.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

No significant costs are anticipated. No savings are anticipated.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Department cannot anticipate the costs of investigating, prosecuting and adjudicating alleged violations of the Act because there is no basis for comparison for this activity. The Office cannot predict the costs of monitoring compliance with the registration exclusions. Further, it is not expected that the levying of administrative fines will demonstrably offset costs. No savings are anticipated. *See* number 28.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community						
Local Government						
State Government						
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community	\$19,100	\$1,200	\$20,000	\$1,200	\$20,000	\$1,200
Local Government						
State Government	\$27,400	\$12,100	\$12,100	\$12,100	\$12,100	\$12,100
Total Costs	\$46,500	\$13,300	\$32,100	\$13,300	\$32,100	\$13,300
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(20a) Explain how the cost estimates listed above were derived.

Cost estimates were determined by doing a financial analysis of actual costs and also by interviewing staff regarding the amount of time they spend working on this program.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
ODHH	\$ 0	\$0	\$ 10,319.52	\$ 1,109.27

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects and costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Non-regulatory alternatives cannot create a legally enforceable standard and therefore were not considered. These regulations provide information and guidance to a new Act and previously unregulated community.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Alternative regulatory schemes were not considered.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no comparable federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Since the regulations are required under the Act, the regulations will not put Pennsylvania at a competitive disadvantage with other states.

The Department reviewed the requirements of New York, New Jersey, Maryland, Ohio, West Virginia and Delaware. New York requires national certification or state credentialing authority as approved by the court administrator for interpreters in court proceedings. New Jersey requires certification by RID for court proceedings. Maryland does not have any certification requirements. Ohio requires a license from the Department of Education for educational interpreters and requires national certification for court proceedings. West Virginia requires NAD or RID certification for Court, grand jury or administrative proceedings and for arrests. Delaware requires some type of certification for court proceedings.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

It is not anticipated that any other meetings will be scheduled. *See* number 16.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The proposed regulations require individuals to register with the Office in order to provide or offer to provide sign language interpreting and transliterating services, hold themselves as qualified sign language interpreters or transliterators or use similar titles or designations. Individuals will be required to submit applications for registration and renewal of registrations and maintain a registration card or identification card. Additionally, the Office will be required to create and maintain the forms necessary for registration and renewal and maintain records relating to registration status, hearings and discipline. Physicians' offices will be required to complete and maintain records relating to patient notification under section 4(b) of the Act. Additionally, unregistered sign language interpreters and transliterators providing services at the request of an individual who is deaf or hard of hearing will be required to maintain for two years a copy of the client's written confirmation acknowledging that the interpreter or transliterator is not registered under the Act.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There is no need for special provisions.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The proposed regulations will be effective when published in the *Pennsylvania Bulletin* as a final-form regulation. These regulations will require no new licenses, permits or approvals.

(31) Provide the schedule for continual review of the regulation.

The Department will continue to monitor the regulation's impact and effectiveness.

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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY:</p> <p>DEPUTY ATTORNEY GENERAL</p> <p>DATE OF APPROVAL</p> <p>Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Department of Labor & Industry (AGENCY)</p> <p>DOCUMENT / FISCAL NOTE NO. 12-71</p> <p>DATE OF ADOPTION:</p> <p>BY: Sandi Vito <i>SV</i></p> <p>TITLE: Acting Secretary (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY: <i>[Signature]</i></p> <p>DATE OF APPROVAL <i>Andrew C. Clark</i> Executive Deputy General Counsel SEP 10 2008</p> <p>Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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Revised Final-Form Rulemaking

34 PA. CODE CHAPTER 501

Registration of Sign Language Interpreters and Translitterators

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INDEPENDENT REGULATORY
REVIEW COMMISSION

FINAL-FORM REGULATION

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 501]

Registration of Sign Language Interpreters and Transliterators

The Department of Labor and Industry (Department) amends Title 34 (relating to sign language interpreters and transliterators) to read as set forth in Annex A.

Statutory Authority

The Sign Language Interpreter and Transliterators State Registration Act (act) (63 P.S. §§ 1725.1 – 1725.11) provides the legal authority for this final-form regulation.

The act charges the Office for the Deaf and Hard of Hearing (Office) within the Department with the responsibility to promulgate regulations that are necessary to carry out the provisions of the act 63 P.S. § 1725.3(4). These provisions include approval of an examination which tests knowledge and proficiency, fees, disciplinary violations, registration and the reactivation of registration after suspension or revocation. 63 P.S. §§ 1725.5(a)(1)(iii) and (d), 1725.8(a)(6), and 1725.9(c)(1).

Comments

Notice of proposed rulemaking was published at 36 Pa. B. 3822 (July 22, 2006) affording the public, the Legislature and the Independent Regulatory Review Commission (IRRC) the opportunity to offer comments. The Department received comments from the public and the IRRC. It did not receive any comments from the Legislature.

In addition to IRRC and individuals, the Department received comments from the Pennsylvania Registry of Interpreters for the Deaf (Pa RID), the National Registry of Interpreters for the Deaf, Inc. (RID), the Advisory Council for the Deaf and Hard of Hearing (ACDHH) and Sorenson Communications. The comments and the Department's responses to these comments are addressed below.

§ 501.1 Definitions.

NAD- IRRC and Marc Holmes commented that the definition of the *NAD* (National Association for the Deaf) should be amended to remove the incorrect address and clarify that the *NAD* *previously* offered certification. The National RID and the Pa RID also suggested that the address for the RID be removed and suggested expansion of this definition. IRRC suggested that an alternative would be for the Department to distribute information regarding addresses to individuals upon request or to include links to the organizations on its website. The Department made these changes.

NAD National Interpreter Certification – IRRC and the National RID, Pa RID and Marc Holmes commented that the Department should amend the definition of the *NAD* National Interpreter Certification to reflect the following: (1) the test is the *former* examination offered by the *NAD* for certification; (2) the test was performance based only; and, (3) the certifications obtained from passage of the examination remain valid. The final-form regulations contain these changes.

NAD-RID NIC - The ACDHH commented that this definition should be expanded to include the Certified Deaf Interpreter (CDI) examination. The CDI examination is a separate testing instrument. As such it is not appropriate to include it within this definition. Accordingly, the Department will not amend this definition. It should be noted however, that after the publication of the proposed regulations RID ceased using “*NAD-RID*” in the title of this examination. Consequently, the Department amended the definition to reflect that the accurate examination name is “*NIC*.”

The Pa RID and Marc Holmes also requested the deletion of this definition. These commentators stated that the definition was redundant because it is considered an RID Generalist examination. However, the RID utilizes the term “*NIC*” as the name of the examination and does not include it under “*generalist*” exams. Consequently, this definition will remain in the final-form regulations.

Rid Generalist Examinations – IRRC commented that the Department needed to amend this definition to reflect that the generalist examinations are former examinations which are no longer offered, but that the certifications are still valid. The Department has amended the definition to clarify that the examinations for the Certified Interpreter (CI), Certified Transliterater (CT), Oral Transliterater Certificate (OTC) and Certified Deaf Interpreter (CDI) are current examinations and that the examinations for Comprehensive Skills Certificate (CSC), Master Comprehensive Skills Certificate (MCSC) and the Oral Interpreter Certificate: Comprehensive (OIC:C) are former examinations. All of these certifications remain valid. Additionally, based upon comments received from IRRC, the Department has added definitions for the certification acronyms.

Other terms – Comments were received by the Pa RID and Marc Holmes requesting additional definitions for the terms “day,” “internship,” “practicum,” and “emergency.” Under the Statutory Construction Act, words are to be construed according to “rules of grammar and according to their common and approved usage.” 1 Pa. C.S.A. § 1903. Section 1991 of the Statutory Construction Act contains a definition for “day.” Therefore, further definitions are unnecessary.

ACDHH suggested that the term “qualified interpreter” be defined consistent with the definition of that term contained in the Americans with Disabilities Act. Because the act already defines “qualified interpreter” as an individual who is registered with the Office, a regulatory definition would be redundant. 63 P.S. § 1725.2.

§ 501.2 Fees

ACDHH suggested that the Department include a \$25 fee for students who are providing interpreting services in supervised internships or practicum. However, individuals providing services as interns are exempt from registration. 63 P.S. § 1725.4(b)(3). Consequently, there is no authority under the act to impose fees on these students.

§ 501.3 Examination

IRRC recommended deletion of references to the NAD NIC and the RID Generalist examinations because these examinations are no longer offered. It further recommended clarification that the NAD-RID NIC is the only examination approved for registration. The Department declines to remove these examinations from the list of approved examinations for the reasons that follow.

The act requires that applicants provide proof of passage of an examination approved by the Office that tests knowledge and proficiency. 63 P.S. § 1725.5(a)(1)(iii). Although the NAD NIC and RID Generalist examinations are no longer offered, the Department will continue to accept these older examinations for purposes of registration.

Ann Sidone suggested that the Office create quality assessments for non-registered interpreters and limit their practice areas. This commentator also suggested that the Office require interpreters to score a 4 on the Educational Interpreter Performance Assessment in order to interpret in post-secondary educational settings. The act does not require non-registered interpreters to pass an examination or a quality assessment. 63 P.S. § 1725.4. Further, the act does not

limit the practice areas of registered interpreters. Accordingly, this revision will not be made.

IRRC commented that since subsection (b) requires applicants to obtain examinations and applications directly from and pay the required fee to the examination provider, the Department's website should provide a link to the providers. The Department's website currently contains a link to the examination providers' websites.

§ 501.4 Registration

Comments were received from Pa RID, the National RID and Marc Holmes requesting that the reference to the NAD-RID NIC be removed from § 501.4(a) because it is a test and not a certification. The final-form regulations reflect this change.

IRRC stated that the final-form regulations should include a time frame in which the Department will issue the registration. A 60-day time frame was added to the regulations.

Pa RID suggested that applicants be required to submit "current" certification to ensure that registered interpreters are up-to-date on continuing education units, changing "may" to "shall" in subsection (a)(1), and capitalizing "office" in (2). The proposed and final-form regulations require the submission of current certification. The Department did not change "may" to "shall." This will allow the Office to consider other forms of evidence as proof that an applicant has passed an approved examination. The term "office" has been capitalized.

IRRC commented on incorrect citation form in this section. These corrections were made. IRRC further stated that the Department should add a new section to the regulations listing the violations for the portions of the regulated community who do not have to reference the act since the regulations include a reference to section 8 of the act in this section. IRRC believes that inclusion of the violations in the regulations will allow the regulated community to know what constitutes a violation without having to reference the act. The Department has added a section which lists the violations. This section is numbered 501.7. Consequently, this has resulted in the re-numbering of other provisions as noted below. Additionally, the Department will publish the act and the regulation on its website.

§ 501.5 Exemptions

IRRC recommended that all 8 exemptions listed in section 4 of the act (63 P.S. § 1725.4) be included in the regulations. The Department has made this change. The addition of all exemptions has resulted in renumbering in this section.

Subsection (a) Interpreting in a religious setting – IRRC requested that the Department explain why the phrase “religious-study purposes” is used in this subsection rather than the phrase “educational purposes” found in the act. Two other commentators, ACDHH and Ann Sidone, requested deletion of the term “study.” The Department used the phrase “religious-study purposes” to clarify that the exemption only applies to interpreting services performed for religious instruction instead of instruction in secular subjects at a religiously affiliated school. Sign language interpreting and transliterating services during secular instruction must be provided by an individual who is registered with the Office or who meets the requirements established by the State Board of Education. The Department believes that the term *study* accomplishes its intended purpose and declines to eliminate it from the regulations.

Subsection (a)(1) - Pa RID requested a definition clarifying what constitutes a *worship service*. The Department declines to add a definition for this term. Whether a service constitutes a *worship service* is dependent upon the particular religious sect’s beliefs, is not specified by statute or judicial cases and cannot be enumerated by regulation. Consequently, a single definition for *worship service* would not respond to varying philosophies. Accordingly, the term *worship service* should be determined on a case by case basis with input from the particular religious sect.

Subsection (d) Out-of-state interpreter (previously subsection (b) in proposed regulations) – Pa RID and Marc Holmes stated that the regulations provided that out-of-state interpreters must possess current certification from a “national certifying body,” while the act specifically references certification by the NAD or RID, Inc. This correction has been made.

IRRC questioned how soon the Office must be notified of an out-of-state interpreter providing services. Due to the possibility that some services might be requested and performed with short notice, the Department amended the regulation to require that notice must be provided to the Office within 5 business days of the provision of services.

Other comments were received from Marc Holmes, Barbara Anthony and Ann Sidone stating that the requirements for out-of-state interpreters should be the same for non-registered in-state interpreters who provide up to 14 days of services in a calendar year. The act exempts out-of-state interpreters who provide services

for no more than 14 days in a calendar year. 63 P.S. § 1725.4(b)(4). However, the act does not exempt non-registered in-state interpreters. The regulation cannot be used to expand the exemptions beyond the act's parameters.

IRRC and Pa RID questioned whether the required forms to comply with the requirements of this subsection and other provisions of the act would be available from the Office. The regulations were amended to clarify that forms are available from the Office or the Department's website.

Additionally, subsection (b)(1)(3)(i) was amended by deleting the reference to the time and nature of the service being provided. The Department believes that furnishing the date of service is sufficient and the exact time is not necessary. Furthermore, the nature of the service would be sign language interpreting or transliterating. Accordingly, further information is not required.

Subsection (e) Interpreting at the request of a deaf or hard of hearing individual (previously subsection (c) in proposed regulations)- Pa RID suggested that a hearing individual who relies on the services of a sign language interpreter or transliterator be allowed to approve the use of a non-registered interpreter. However, section 4(b)(5) of the act specifically provides that a non-registered individual may provide services at *the request* of an individual who is deaf or hard of hearing. 63 P.S. § 1725.4(b)(5)). Consequently, it is clear that the act did not intend to provide a hearing individual with a right of approval.

Eve Adelman requested that the Department eliminate subsection (c) because the subsection is unethical and undermines the original purpose of the act. However, this subsection is necessary because it contains clarification of a provision contained in section 4(b)(5) of the act. 63 P.S. § 1725.4(b)(5).

Additionally, the Department made additional amendments to this subsection to clarify that the *individual* referenced is the person providing sign language interpreting or transliterating services. Further, changes were made to evidence that the deaf or hard of hearing individual was choosing to use the services of an unregistered individual.

Subsection (f) – Educational interpreters (previously numbered subsection (d) in proposed regulations) – IRRC, Pa RID, ACDHH, Marc Holmes and Rose Breinich commented that the proposed regulations do not correspond with section 4(b)(7) of the act (63 P.S. § 1725.4(b)(7)) since the enactment of Act 92 of 2006. Previously, the act provided for an exemption from registration for individuals who provided sign language interpreting services for a school-related activity if the individual was employed in a public or private elementary or secondary school or institution chartered by the Commonwealth and the individual received a rating

equal to or exceeding 70% on the Educational Interpreter Performance Assessment.

On July 7, 2006, Act 92 of 2006 was enacted which deleted these requirements and added language that provides that an individual is exempt from registration if the individual is employed in a public or private elementary or secondary school or institution chartered by the Commonwealth and providing services for the instruction of students or other school-related activity. The act further provides that exempt individuals shall comply with regulations promulgated by the State Board of Education establishing criteria for persons providing sign language interpreting and transliterating services to students. 63 P.S. § 1725.4(b)(7).

Accordingly, the Department changed the language in the final-form regulations to be consistent with the amendment to the act made since submission of proposed rulemaking. Additionally, the Department has added the Pennsylvania Code citations to the applicable Department of Education regulations. 22 Pa. Code §§ 14.105, 711.5.

Subsection (g) – Interpreting in physician’s office (previously numbered subsection (e) in proposed regulations) – A comment was received from the Pennsylvania Academy of Otolaryngology, Head and Neck Surgery requesting clarification that a physician has the discretion to determine whether an interpreter is necessary in the first instance. After reviewing this comment, the provisions of the Americans with Disabilities Act, and the act, the Department has rewritten the provisions of this subsection.

The revisions clarify that the individual being regulated is the individual providing sign language interpreting or transliterating services. These revisions also clarify that a sign language interpreter or transliterator may not be required in all instances. However, when these services are required for effective communication, the interpreter must be registered with the Office unless the patient is notified that the individual is not registered and that the patient has a right to the services of a registered interpreter.

IRRC questioned how long a physician’s office must keep a copy of the patient’s signed statement. Additionally, the Pa RID questioned whether a form from the Office would be available. The final-form regulations clarify that forms are available from the Office or the Department’s website and that physicians are required to maintain the forms in a patient’s file consistent with record retention requirements of the relevant professional licensure statute or regulation.

Pa RID suggested that this subsection require physicians to submit the waiver forms to the Office. The Department believes this requirement would potentially violate privacy rights of a patient who is deaf or hard of hearing. As such, this provision will not be added.

Eve Adelman suggested the addition of language that limits the use of non-registered interpreters in the medical field unless the interpreter is referred from a referral service that is liable for any mistakes caused by the interpreter. However, the act provides no authority for the Department to regulate where individuals are required to obtain interpreters.

Mentorships - Comments were received from the Pa RID, Sorenson Communications and Marc Holmes requesting the addition of a subsection addressing individuals who are participating in a “mentorship.” The act does not address these types of programs. The act exempts individuals from registration who are participating in a supervised internship or practicum at an accredited college or university or the RID or NAD. 63 P.S. § 1725.4(b)(3). Internships and practicum are official or formal programs or school courses that provide practical experience for beginners in a particular field of study. Mentorships, on the other hand, are quasi-personal/professional relationships between advisors or teachers and individuals to provide counsel, direction and advice. These relationships do not qualify as internships or practicum. Accordingly, the Department declines to make this revision.

Another commentator, Pamela Cospes, requested a similar exemption for students who have graduated from an accredited Interpreter Training Program (ITP) and requested that these individuals receive a 3- to 5- year grace period to pass the examination approved by the Office. The Department is mindful that individuals graduating from ITPs need an opportunity to hone their skills prior to sitting for a certification examination; however, the act does not contain an exemption for these individuals. Consequently, the regulations cannot contain this exemption.

Emergency – In addition to requesting a definition for the term *emergency*, Cindi Brown requested that the Department require hospital emergency rooms to develop policies to ensure the availability of registered interpreters to patients who are deaf and hard of hearing. Section 4(b)(2) of the act defines *emergency* as a situation where a delay of interpreting services might lead to injury or loss to the individual requiring services. 63 P.S. § 1725.4(b)(2). Further, the act regulates the community of sign language interpreters and transliterators and does not provide authority for the Department to regulate hospitals. Consequently, the Department declines to include these suggestions in the final-form regulations.

Subsection (h) – A new exemption has been added to this section since publication of the proposed regulations. The exemption was required due to the passage of Act 172 of 2006 (2 Pa.C.S. §§ 561 – 588 and 42 Pa. C.S.A. SubChapter C) which requires the Administrative Office of the Pennsylvania Courts (AOPC) and the Department to certify and approve foreign language interpreters, sign language interpreters and transliterators, and otherwise qualified interpreters who may provide services in judicial and administrative proceedings. Although individuals who are registered with the Office may be deemed certified and otherwise qualified to provide services under Act 172, the AOPC and the Department may certify or approve otherwise qualified individuals who may not be registered with the Office. Accordingly, this section provides an exemption for those individuals who are providing services in judicial and administrative proceedings consistent with the provisions of Act 172.

§ 501.6 Complaints

Subsection (a) – Pa RID and Marc Holmes suggested that the Department allow the submission of videotaped complaints because English is not the native language for many sign language users. As such, writing a complaint in English could prove to be a hardship. The Department has determined this to be a legitimate concern and amended the provisions of this section in the final-form regulations. However, the Department specified that complaints can be “written” or in “visual language.” Using the phrase “visual language complaint” allows for advancements in technology and other various types of media beyond current technology levels.

PA Rid and ACDHH requested that the Department replace “may investigate” with “shall investigate.” The Department has discretionary authority to investigate complaints under the act and will investigate viable or legitimate complaints.

Barbara Anthony requested that the Department allow for the filing of anonymous complaints. Anonymous complaints increase the risk of individuals filing false or harassing complaints and are often unsubstantiated. However, the regulations do not preclude the Department from investigating anonymous complaints where appropriate.

The National RID expressed concern that an interpreter filing a complaint or reporting information might violate the RID Code of Conduct, if that information were obtained through an interpreting assignment. The RID Code of Conduct is a private internal standard of conduct that does not have the force or effect of law. Further, part B of the Applicability Section of this code recognizes

that state and federal laws and regulations take precedence over the code. Accordingly, this issue does not justify amending the regulation.

§ 501.7 Violations

As noted above, based upon comments received from IRRC, the Department has added a separate section to the regulations that lists the various violations including violations enumerated in the act.

§ 501.8 Hearings/appeals (as Proposed regulation § 501.7)

Subsection (a) – IRRC requested that the Department include references to the subject matter of section 8 (relating to registration violations) and section 9 (relating to suspension, denial, nonrenewable, or revocation of state registration) of the act. 63 P.S. §§ 1725.8 and 1725.9. The Department has included subject matter references in the final-form regulations.

Subsection (b) – The Department amended this subsection to add language clarifying the effect of a respondent’s failure to respond to an order to show cause.

Subsection (e) – IRRC questioned how much time a presiding officer has to issue a proposed report and order, and requested that the Department include a time frame. Hearing complexity and length have a direct impact on the time for a presiding officer to prepare a proposed report and order. Significantly, the General Rules of Administrative Practice and Procedure (GRAPP), 1. Pa. Code § 31.1 *et seq.*, governing hearings and appeals before administrative agencies do not enumerate a time in which a presiding officer must issue a proposed report and order. Consequently, the Department declines to do so.

Subsection (f)(1)- IRRC also noted a typographical error contained in this subsection relating to the time frame in which exceptions must be filed. The final-form regulations reflect the appropriate time period of 30 days contained in GRAPP. 1 Pa. Code § 35.211.

The National RID, Pa RID, and Marc Holmes also recommended that the term *registrant* in subsections (b) and (c) be changed because a non-registered individual could be in violation of the act. The Department has substituted the term *respondent* in the final-form regulation.

§ 501.9 Reconsideration (as Proposed regulation § 501.8)

Subsections (a) and (b) – IRRC questioned how an applicant for registration would be notified of a denial, whether the notice would specify the

reasons for the denial, and how long the applicant would have to file reconsideration. These subsections have been amended to clarify that applicants will be notified by mail and the notice will specify both the reasons for the denial and the procedures for requesting reconsideration. The time period for requesting reconsideration is 30 days from the date of the notice.

Subsection (f) – IRRC requested that subject matter references to Sections 10 (relating to appeals) and 11 (relating to effect of an order) of the act (63 P.S. §§ 1725.10 and 1725.11) be included in the final-form regulations. The Department has made this change.

§ 501.10 Biennial registration renewal (as Proposed regulation § 501.9)

Subsection (a) – The Department received comments from Pa RID that the registration cards be issued in paper and electronic form within 30 days. The act provides that registration cards be issued in paper or electronic form. 63 P.S. § 1725.5(b)(2). The final-form regulation provides that registration cards will be issued within 60days.

Subsection (d) – Pa RID suggested that the language be amended to clarify that the Office does not have the option of failing to send a renewal notice to a registrant. While the Office does not anticipate that it will fail to send a renewal notice, the individual registrant will be responsible for ensuring that a registration is current. Accordingly, no change to the language of this subsection was made.

§ 501.11 Reactivation of registration (as Proposed regulation § 501.10)

IRRC commented that, although this section addresses reactivation of a suspended registration, it fails to address the procedure for a revoked registration. Section 9(c) of the act (63 P.S. § 1725.9(c)) covers reactivation of suspended and revoked registrations. Accordingly, this section of the final-form regulations has been amended to include procedures for reactivation of revoked registrations.

IRRC also requested the removal of the word *certain* from subsection 10(a)(1). This change is reflected in the final form-regulation.

Additionally, Pa RID suggested that the Office maintain proof of compliance with the terms and conditions of any suspension order. Because compliance information is required as part of the reactivation application process and will be reviewed by the Office, there is no need to include this language in the regulations.

§ 501.12 Change of address/name/information (as Proposed regulation § 501.11)

IRRC and Pa RID noted that there was a discrepancy between the act and the proposed regulations. The act requires that change of information be provided to the Office within 10 days of the change. 63 P.S. § 1725.6. The final-form regulations reflect the 10-day period of the act.

IRRC also requested that the Department amend the language to clarify what is meant by “other personal or professional information.” This phrase is meant to include updated information pertaining to disciplinary or administrative actions taken by other states in accordance with section 8(a)(3) of the act. 63 P.S. § 1725.8(a)(3). The final-form regulations reflect this clarification.

§ 501.13 Confidential Communications – IRRC recommended that the Department include a section corresponding to section 7 of the act (relating to Confidential communications) 63 P.S. § 1725.7. IRRC stated that this would assist members of the regulated community who rely solely on the regulations. Consistent with IRRC’s recommendation, the Department has added this section.

Miscellaneous Comments

Sorenson Communications suggested that interpreters who provide Video Relay Services (VRS) should be exempt from the regulations. VRS is a part of the federal Telecommunications Relay Services (TRS) that are regulated by the Federal Communication Commission. The Pennsylvania Public Utility Commission operates a TRS certified by the FCC, which adheres to the federal regulations. Although the FCC regulates TRS services in the Commonwealth, the FCC does not regulate the provision of interpreter services within the Commonwealth. Furthermore, the FCC rules allow for more stringent requirements to be imposed by individual states. Finally, the Department is not authorized to exempt any individual or entity from the act through regulation.

Melanie Holmes expressed concern about limiting the use of non-registered interpreters within the Commonwealth and suggested that a particular interest group was the driving force behind the regulations. The proposed-regulation process allows comment from all concerned members of the public. All comments were reviewed and considered in the drafting of these final-form regulations. No outside entity controlled or directed this process.

Ann Sidone suggested that the act and the regulations will have a negative impact and result in a shortage of interpreters. The commentator therefore suggested that the act be temporarily suspended. The Department has no authority

to suspend the enforcement of a statute, particularly through regulation. Furthermore, the Department believes that the exemptions to registration will alleviate any concerns about the shortage of registered interpreters.

IRRC and ACDHH noted that the index was misnumbered. The index has been numbered correctly in the final-form regulation.

Finally, IRRC recommended, for consistency purposes, that the Department include parallel citations to Purdon's where a section of the act has been referenced. The Department made this change.

Affected Persons

All individuals who provide sign language interpreting and transliterating services within the Commonwealth will be affected. The Office estimates that approximately 250 individuals will register under this Act. These registrants will be impacted by the Act's requirements which include a demonstration of competency to provide interpreting and transliterating services and the registration fee. Pennsylvanians who are deaf or hard of hearing and who rely on interpreting and transliterating services will benefit from uniform standards relating to knowledge and proficiency.

A physician's office will have to complete and maintain records and provide notification to patients to comply with the exemption provided in section 4(b)(8) of the Act (63 P.S. § 1725.4(b)(8)) and § 501.3(d) of the proposed rulemaking. A physician's office will have to allow a patient to utilize a registrant, if requested.

Fiscal Impact

It is anticipated that there will be costs to the Department as a result of this final rulemaking. These costs should be offset by the registration and renewal fees contained in this final-form regulation. It is anticipated that the Department will receive \$20,000 in initial registration fees.

The Department cannot anticipate the costs of investigating, prosecuting and adjudicating alleged violations because there is no basis for comparison for this activity. The Office cannot predict the costs of monitoring compliance with the registration exclusions provided in § 501.4 (relating to registration). It is not expected that the levying of administrative fines will demonstrably offset costs.

Paperwork Requirements

The Office will need to develop forms for registration and renewals and for filing complaints. It will develop a registration card or identification for registrants. Related forms include registration denial and notifications concerning reconsideration. The Office will have to keep records indicating registration status, hearings and discipline. Many of these records will have to be accessible to the public under section 3(3) of the act. 63 P.S. § 1725.3(3).

Applicants will have to provide documentation to register and renew registrations, including certification requirements under § 501.3 (relating to examination). A physician's office will have to complete and keep records concerning patient notification under § 501.4(d) (relating to registration).

Effective Date

This regulation will be effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

A sunset date is not appropriate for this regulation. However, the Department will continue to monitor the impact and effectiveness of the regulations.

Contact Person

Persons who require additional information about this final-form regulation may submit inquiries to Sharon Behun, Director, ODH, 1521 N. 6th Street, Harrisburg, PA 17102. 717-783-4912 (v/tty); 1-800-233-3008 v/tty (PA only) and 717-783-4913 (fax). E-mail: sbehun@state.pa.us.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of the Notice of Proposed Rulemaking, published at 36 Pa.B. 3822 (July 22, 2006), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee for review and comment. In addition to submitting the proposed rulemaking, the Department also provided the IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department also provided IRRC and the Committees with copies of the comments received during the public comment period, as well as other

documents when requested. In preparing these final-form regulations, the Department considered all the comments from IRRC and the public. The House and Senate Committees did not provide comments.

Under section 5.1(j.1)-(j.4) of the Regulatory Review Act (71 P.S. § 745.5a(j.1)- (j.4)), these final-form regulations were deemed approved by the House and Senate Committees on August 20, 2008. IRRC met on August 21, 2008 and disapproved the regulations in accordance with section 5.1(e) and 6 of the Regulatory Review Act (71 P.S. § 745.5a(e)).

In compliance with section 7(c) of the Regulatory Review Act (71 P.S. § 745.7(c)), the Department submitted a report to the Committees and IRRC which included these revised final-form regulations. Under section 7(c.1) IRRC met on _____, 2008 and approved the regulations.

Findings

The Department finds that:

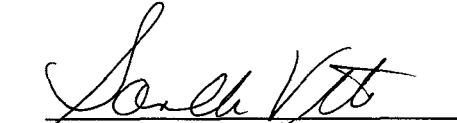
- (a) Public notice of intention to amend the administrative regulations amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder in 1 Pa. Code §§ 7.1 and 7.2.
- (b) A public comment period was provided as required by law and all comments were considered.
- (c) The final-form regulations are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department, 34 Pa. Code, are amended by adding §§ 501.1 through 501.13 to read as set forth in Annex A.
- (b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.
- (c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin* as a final-form regulation.


Sandi Vito
Acting Secretary

Fiscal Note

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**Report of the Department of Labor and Industry in
Response to IRRC's Order Disapproving Regulation #12-71**

INDEPENDENT REGULATORY
REVIEW COMMISSION

Registration of Sign Language Interpreters and Transliterators

On August 21, 2008, the Independent Regulatory Review Commission (IRRC) voted to disapprove final-form rulemaking number 12-71 of the Department of Labor and Industry. Rulemaking 12-71 creates new provisions to implement the Sign Language Interpreter and Transliterator State Registration Act. The rule-making includes provisions relating to definitions, fees, approval of examinations which test knowledge and proficiency, registration, exemptions, complaint procedures, disciplinary violations, hearings and appeals and registration and the reactivation of registration after suspension or revocation.

While IRRC determined that the regulations were consistent with the statutory authority of the Department and with the intention of the General Assembly, it disapproved the regulation after consideration of the clarity criterion of the Regulatory Review Act. Specifically IRRC cited section 5b(b)(3)(ii) relating to clarity and lack of ambiguity as the basis for the determination that the regulation was not in the public interest.

Initially IRRC points out that section 501.4 (relating to Registration) and section 501.5 (relating to exemptions) are written in a manner that requires a person to read both the statute and the regulations in order to understand all aspects of the registration process. IRRC recommended that the sections be amended. IRRC also recommended the addition of a section pertaining to confidential communications.


In the revised final-form regulations, the Department has amended the language of sections 501.4 and 501.5 consistent with IRRC's recommendations. In addition, the Department added a new section, section 501.13, which pertains to confidential communications.

Secondly, IRRC believed that the definition of "RID Generalist Examinations" found in section 501.1 remains unclear because it does not reflect that the examination is no longer given and now contains undefined acronyms. Consistent with IRRC's comments, the Department amended the definition section to include definitions for the acronyms. In addition, the Department has amended the language of the "RID Generalist Examinations" definition to clarify that examinations for "Certified Interpreter" (CI), "Certified Transliterator" (CT),

“Oral Transliterator Certificate” (OTC) and “Certified Deaf Interpreter” (CDI) examinations are current examinations and that the examinations for “Comprehensive Skills Certificate” (CSC), Master Comprehensive Skills Certificate” (MCSC) and the “Oral Interpreter Certificate: Comprehensive” (OIC;C) are former examinations.

Finally, with respect to section 501.5(e) (pertaining to educational interpreters), IRRC acknowledged that at the time the final-form regulations were originally developed the referenced regulations for the State Board of Education were not finalized. As such, no citation was included. However, those regulations are now finalized and IRRC recommends that the Department include the specific citations in this section. The Department has made the recommended amendment in the revised final-form regulation.

The Department respectfully submits this report under section 7(c) of the Regulatory Review Act and encloses a copy of the revised final form rulemaking and the findings of the IRRC. The Department requests that IRRC approve the rulemaking as revised. The Department believes the rulemaking as revised is in the public interest.



Sandi Vito, Acting Secretary
Department of Labor and Industry

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DISAPPROVAL ORDER

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Commissioners Voting:

Public Meeting Held August 21, 2008

Arthur Coccodrilli, Chairman
Karen A. Miller
John F. Mizner, Esq.

Regulation No. 12-71 (#2556)
Department of Labor and Industry
Registration of Sign Language Interpreters and
Translitterators

On July 10, 2006, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Labor and Industry (Department). This rulemaking adds 34 Pa. Code Chapter 501. The proposed regulation was published in the July 22, 2006 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on July 8, 2008.

The purpose of the rulemaking is to implement the Sign Language Interpreter and Translitterator State Registration Act (Act). (63 P.S. §§ 1725.1 - 1725.11.)

Based upon the information provided to us, the Commission has determined that one of the criteria set forth in the Regulatory Review Act has not been met. That criterion pertains to clarity and lack of ambiguity. (71 P.S. § 745.5b(b)(3)(ii).)

Our comments on the proposed version of this rulemaking identified specific sections that lacked clarity. The Department has made several changes to the rulemaking in response to those comments and also comments provided by the public. However, the following clarity concerns remain.

First, § 501.4, pertaining to registration and § 501.5, pertaining to exemptions, are written in a manner that requires a person to read both the regulation and the Act in order to understand all aspects of the registration process. In addition, the regulation is silent on the provisions of the Act pertaining to confidential communications. We recommend that §§ 501.4 and 501.5 be amended in a manner that more accurately informs the regulated community of the registration process and we recommend that a new section pertaining to confidential communications be added to the regulation. We note that the amendments to the exemptions in § 501.5 should include the exemptions contained in the Act and also the exemption created by Act 172 of 2006, which relates to court and administrative proceeding interpreters.

Second, we believe the definition of "RID Generalist examinations" found in § 501.1 remains unclear for two reasons. First, the definition does not reflect the fact that the examination is no longer given. In addition, the definition now includes the following undefined acronyms: CI/CT, CSC, MCSC, CDI, OTC and OIC:C. We recommend that this definition be amended to reflect the fact that the examination is no longer given and to define the acronyms.

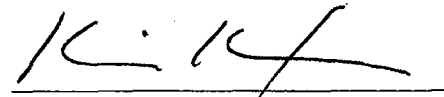
Third, in our comment on § 501.5(e), we asked the Department to amend the final regulation in accordance with Act 92 of 2006 (Act 92), which relates to interpreting and transliterating in a public or private school. The Department added language to reference "regulations promulgated by the State Board of Education." The State Board of Education

recently promulgated two regulations, as required by Act 92. We acknowledge that when the final-form regulation was developed by the Department, the regulations of the State Board of Education were not finalized and it would not have been possible to include more specific citations. However, the State Board of Education's regulation are now finalized and we recommend that this final regulation include those specific citations (See 22 Pa Code §14.105 and §711.5.)

We have determined this regulation is consistent with the statutory authority of the Department (63 P.S. § 1725.3(4)) and the intention of the General Assembly. However, after considering the clarity criterion of the Regulatory Review Act discussed above, we find that promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

This regulation is disapproved.



Kim Kaufman, Executive Director



Annex A

TITLE 34. LABOR AND INDUSTRY

PART IX. OFFICE OF THE DEAF AND HARD OF HEARING

CHAPTER 501. REGISTRATION OF SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

- § 501.1 Definitions
- § 5[10]01.2 Fees
- § 501.3 Examination
- § 501.4 Registration
- § 501.5 Exemptions
- § 501.6 Complaints
- § 501.7 [Hearings /appeals] VIOLATIONS
- § 501.8 [Request for reconsideration of registration denial] HEARINGS/APPEALS
- § 501.9 [Biennial registration renewal] REQUEST FOR RECONSIDERATION OF REGISTRATION DENIAL
- § 501.10 [Reactivation of registration] BIENNIAL REGISTRATION RENEWAL
- § 501.11 [Change of address/name/information] REACTIVATION OF REGISTRATION
- § 501.12 CHANGE OF ADDRESS/NAME/INFORMATION
- § 501.13 CONFIDENTIAL COMMUNICATIONS

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 REVIEW COMMISSION

§ 501.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Act- The Sign Language Interpreter and Transliterators State Registration Act (63 P.S. §§ 1725.1-1725.12)

CDI – CERTIFIED DEAF INTERPRETER- A CERTIFICATION ISSUED BY RID.

CI – CERTIFICATE OF INTERPRETATION ISSUED BY RID.

CSC –COMPREHENSIVE SKILLS CERTIFICATE ISSUED BY RID.

CT – CERTIFICATE OF TRANSLITERATION ISSUED BY RID.

Department- The Department of Labor and Industry of the Commonwealth.

MCSC - MASTER COMPREHENSIVE SKILLS CERTIFICATE ISSUED BY RID.

NAD – National Association of the Deaf, [814 Thayer Avenue, Silver Spring, MD 20910. A nationally-recognized certification organization for interpreters and transliterators.] **AN ADVOCACY GROUP FOR DEAF AND HARD OF HEARING INDIVIDUALS WHICH PREVIOUSLY OFFERED CERTIFICATION IN SIGN LANGUAGE INTERPRETING AND TRANSLITERATING.**

NAD National Interpreter Certification Test – The [written and] **FORMER** performance examinations conducted by the NAD for Level IV (**MASTER**) or V (**ADVANCED**) certification as a sign language interpreter or transliterator.

[NAD-RID] NIC – The National Interpreter Certification test which is the knowledge[, interview and performance] **AND PROFICIENCY** examination conducted for RID's National Interpreter Certification as a sign language interpreter or transliterator.

Office- The Office for the Deaf and Hard of Hearing within the Department, 1521 North 6th Street, Harrisburg, PA 17102.

OIC:C – ORAL INTERPRETING CERTIFICATE: COMPREHENSIVE ISSUED BY RID.

OTC – ORAL TRANSLITERATION CERTIFICATE ISSUED BY RID.

RID – Registry of Interpreters [of] **FOR the Deaf, INC.** [333 Commerce Street, Alexandria, VA 22314]. A **NATIONAL MEMBERSHIP ORGANIZATION OF PROFESSIONALS AND ITS STATE AFFILIATES THAT PROVIDES** [nationally recognized] certification [organization] for **SIGN LANGUAGE** interpreters and transliterators.

RID Generalist examinationS – The [written and performance] **KNOWLEDGE AND PROFICIENCY** examinationS **WHICH ARE** conducted by RID for **CI/CT, CDI AND OTC** certificationS [as a] **IN** sign language interpreterING or [transliterator] **TRANSLITERATING AND WHICH WERE FORMERLY CONDUCTED BY RID FOR CSC, MCSC AND OIC:C CERTIFICATIONS IN SIGN LANGUAGE INTERPRETERING AND TRANSLITERATING.**

Secretary- The Secretary of the Department or the Secretary's designee.

Year- A calendar year.

§ 501.2. Fees.

(a) The Office will charge the following **NON-REFUNDABLE** fees:

- | | | |
|-----|--|--------|
| (1) | Registration | \$100. |
| (2) | Biennial renewal of existing registration | \$100. |
| (3) | Surcharge for late renewal of biennial registration. | \$50. |
| (4) | Reactivation following suspension. | \$100. |
| (5) | Registration identification card replacement. | \$10. |

§ 501.3. Examination.

(a) All of the following examinations are approved as the examination which tests knowledge and proficiency under section 5(a)(1)(iii) of the Act (63 P.S. § 1725.5(a)(1)(iii)):

- (1) NAD National Interpreter Certification.
- (2) RID Generalist ExaminationS.
- (3) [NAD-RID] NIC.

(b) An applicant for any of the approved examinations shall obtain applications directly from and pay the required examination fee directly to the examination provider.

§ 501.4. Registration

(a) An applicant for registration shall submit all of the following to the Office:

- (1) Proof of receiving a passing score on any of the approved examinations. This may include proof of current certification by NAD **OR** RID[, or NAD-RID NIC].

(2) A completed registration application. Applications may be obtained from the office or the Department'S website. **WWW.DLI.STATE.PA.US/ODHH**

(3) The required registration fee under § 501.2 (relating to fees). Checks shall be made payable to the Commonwealth of Pennsylvania.

(b) The Office will issue a paper or electronic registration to AN **APPLICANT** [registrant] **WITHIN 60 DAYS OF THE DATE OF RECEIPT OF THE APPLICATION** if the [registrant] **APPLICANT** complies with subsection (a) **AND MEETS ALL OF THE FOLLOWING CRITERIA:**[(c) and meets the requirements of section 5(a) of the Act. (35 P.S. § 1725.5(a)).]

- (1) **IS 18 YEARS OF AGE OR OLDER,**
- (2) **HAS PASSED THE EXAMINATION REQUIRED BY SUBSECTION (A),**
- (3) **HAS PAID ALL APPLICABLE FEES, AND**
- (4) **POSSESSES THE GENERAL FITNESS, COMPETENCE AND RELIABILITY SUFFICIENT TO SATISFY THE OFFICE THAT THE APPLICANT IS WORTHY OF STATE REGISTRATION.**

(c) The Office may deny an application for registration if the applicant:

(1) Does not comply with this section.

(2) Fails to meet the requirements of section 5(a) of the Act (63 P.S. § 1725.5(a))[.]. [or]

(3) Committed a violation enumerated in section 8(a) of the Act (63 P.S. § [1725.5(a)(8)].) **1725.8(a) AND § 501.7 (RELATING TO VIOLATIONS).**

(d) The Office will comply with the procedures contained in § 501.[8]9 (relating to request for reconsideration of registration denial) if an application for registration is denied.

§ 501.5. Exemptions.

(a) An individual engaged in interpreting or transliterating services in a religious setting is exempt from registration under section 4(b)(1) of the Act (63 P.S. § 1725.4(b)(1)) if the services are provided either:

(1) During a worship service conducted by a religious entity[; or].

(2) Exclusively for religious-study purposes for a religious entity or religiously affiliated school.

(B) AN INDIVIDUAL ENGAGED IN SIGN LANGUAGE INTERPRETING OR TRANSLITERATING DURING AN EMERGENCY WHEN A DELAY IN OBTAINING A STATE-REGISTERED INTERPRETER OR TRANSLITERATOR MIGHT LEAD TO INJURY OR LOSS TO THE INDIVIDUAL REQUIRING THE SERVICES.

(C) AN INDIVIDUAL ENGAGED IN INTERPRETING OR TRANSLITERATING AS PART OF A SUPERVISED INTERNSHIP OR PRACTICUM AT AN ACCREDITED COLLEGE OR UNIVERSITY, RID OR NAD IF IT IS NOT IN A LEGAL, MEDICAL OR MENTAL HEALTH SETTING

[(b)] **(D)** An individual who does not reside in the Commonwealth is exempt from registration under section 4(b)(4) of the Act (63 P.S. § 1725.4(b)(4)) in accordance with the following:

(1) The individual possesses current certification from [a national certifying body.] **NAD OR RID.**

(2) The individual provides interpreting or transliterating services in this Commonwealth for no longer than 14 days each year.

(3) The individual provides all of the following to the Office **WITHIN 5 BUSINESS DAYS OF** [before] **PROVIDING** the interpreting or transliterating service [is provided]:

(i) Written notice of the [time,] date[, nature] and duration of each sign language or transliterating service that the individual **PROVIDES OR** intends to provide within this Commonwealth. **FORMS MAY BE OBTAINED FROM THE OFFICE OR THE DEPARTMENT'S WEBSITE: WW.DLI.STATE.PA.US/ODHH**

(ii) Proof of current certification.

(4) The Office will provide notice to a sign language interpreter or transliterator that he has provided 14 days of services during the year and that the individual is prohibited from providing any further interpreting or transliterating services within the Commonwealth during the year unless the individual registers with the Office in accordance with Section 5 of the Act (63 P.S. § 1725.5).

[(c)] **(E)** An individual engaged in interpreting or transliterating at the request of a client who is deaf or hard of hearing is exempt from registration under section 4(b)(5) of the Act (**63 P.S. § 1725.4(b)(5)**) in accordance with the following:

(1) The [individual] **INTERPRETER OR TRANSLITERATOR** notifies the client that the individual is not registered with the Office.

(2) The client signs A written confirmation **ACKNOWLEDGING** that the individual is not registered **AND ACKNOWLEDGING THAT THE CLIENT DESIRES THE INDIVIDUAL'S SERVICES. FORMS MAY BE OBTAINED FROM THE OFFICE OR THE DEPARTMENT'S WEBSITE. WWW.DLI.STATE.PA.US/ODHH**

(3) The individual providing services shall **PROVIDE A COPY OF THE CONFIRMATION TO THE CLIENT AND** maintain a copy of the client's signed statement for 2 years.

[(d)] **(F) AN INDIVIDUAL WHO ENGAGES IN INTERPRETING OR TRANSLITERATING STRICTLY AS A VOLUNTEER.**

[(e)] **(G)** An individual is exempt from registration under section 4(b)(7) of the Act (63 P.S. § 1725.4(b)(7)) for a school-related activity **IF THE INDIVIDUAL COMPLIES WITH THE STATE BOARD OF EDUCATION REGULATIONS ESTABLISHING CRITERIA FOR PERSONS PROVIDING SIGN LANGUAGE AND INTERPRETING SERVICES FOR A SCHOOL-RELATED ACTIVITY. 22 PA. CODE § 14.105 (RELATING TO PERSONNEL) AND § 711.5 (RELATING TO PERSONNEL).** [if the individual meets all of the following:

(1) Is engaged in interpreting or transliterating services in a school-related activity.

(2) Is currently employed by a public or private elementary or secondary school.

(3) Received a score of at least 70% on the EIPA.]

H. IF A SIGN LANGUAGE INTERPRETER OR TRANSLITERATOR IS REQUIRED FOR EFFECTIVE COMMUNICATION AT A PHYSICIAN'S OFFICE, [A] An individual is exempt from registration under section 4(b)(8) of the Act (63 P.S. § 1725.4(b)(8)) if the individual provides sign language interpreting or transliterating services to a patient who is deaf or hard of hearing [in a physician's office] in accordance with the following:

(1) The patient signs a written confirmation **ACKNOWLEDGING** that the individual providing the interpreting or transliterating services is not registered, [and] that the patient has the right to request or provide an interpreter or transliterator who is registered with the Office **AND THE PATIENT DESIRES THE SERVICES OF THE UNREGISTERED INDIVIDUAL**. This confirmation must be completed during every office visit. **FORMS MAY BE OBTAINED FROM THE OFFICE OR THE DEPARTMENT'S WEBSITE. WWW.DLL.STATE.PA.US/ODHH**

(2) The [physician's office] **INDIVIDUAL PROVIDING SIGN LANGUAGE INTERPRETING OR TRANSLITERATING SERVICES** informs the patient in writing that a request for a registered interpreter or transliterator made after the commencement of the office visit may result in a delay of physician services.

(3) The physician's office shall maintain a copy of the patient's signed statement in the patient's health care file **CONSISTENT WITH THE REGULATIONS OF THE STATE BOARD OF MEDICINE AND THE STATE BOARD OF OSTEOPATHIC MEDICINE. 49 Pa. CODE §§ 16.95, 25.213 (RELATING TO MEDICAL RECORDS)**.

(4) **THE INTERPRETER OR TRANSLITERATOR SHALL MAINTAIN A COPY OF THE SIGNED STATEMENT FOR A PERIOD OF 2 YEARS FROM THE DATE OF SERVICE.**

(5) **A COPY OF THE SIGNED STATEMENT SHALL BE PROVIDED TO THE PATIENT.**

(I) AN INDIVIDUAL ENGAGED IN INTERPRETING OR TRANSLITERATING IN A JUDICIAL OR IN AN ADMINISTRATIVE PROCEEDING IS EXEMPT FROM REGISTRATION IF THE INDIVIDUAL IS PROVIDING SERVICES UNDER 42 Pa. C.S.A. SUBCHAPTER C (RELATING TO COURT INTERPRETERS FOR THE DEAF) OR 2 PA.C.S. SUBCHAPTER D (RELATING TO

ADMINISTRATIVE PROCEEDING INTERPRETERS FOR PERSONS WHO ARE DEAF.)

§ 501.6. Complaints.

(a) Upon the receipt of a written **OR VISUAL LANGUAGE** complaint or upon its own initiative, the Office may investigate allegations of violations of section 8 of the Act (63 P.S. § 1725.8) **AND § 501.7 (RELATING TO VIOLATIONS).**

(b) Complaints shall contain:

- (1) Name and address of complainant.
- (2) Name and address, if known, of the individual against whom the complaint is filed.
- (3) A statement of the facts forming the basis of the complaint or conclusion that there has been a violation of the Act.
- (4) The name of any witnesses and other information that may be pertinent to an investigation.

(c) Complaints shall be submitted to the Office [of Deaf and Hard of Hearing] which may commence an investigation.

§ 501.7. [Hearings/appeals] VIOLATIONS.

THE DEPARTMENT MAY IMPOSE DISCIPLINARY OR CORRECTIVE MEASURES UNDER SECTION 9(a) OF THE ACT (63 P.S. § 1725.9(a)) OR LEVY ADMINISTRATIVE FINES OF UP TO \$500 UNDER SECTION 8(b) OF THE ACT (63 P.S. § 1725.8(b)) ON A REGISTRANT FOR DOING ANY OR ALL OF THE FOLLOWING:

(1) OBTAINING A STATE REGISTRATION OR RENEWAL OF A REGISTRATION THROUGH FRAUD, DECEIT OR MISREPRESENTATION.

(2) BEING CONVICTED OF A FELONY OR A CRIME IN THIS COMMONWEALTH OR OTHER JURISDICTION RELATING TO THE PROVISION OF INTERPRETER OR TRANSLITERATOR SERVICES.

(3) BEING THE SUBJECT OF A DISCIPLINARY OR OTHER ADMINISTRATIVE ACTION TAKEN AGAINST THIS REGISTRATION,

**CERTIFICATE OR LICENSE TO PROVIDE INTERPRETING OR
TRANSLITERATING SERVICES IN ANOTHER STATE BY A
GOVERNMENT AGENCY.**

**(4) COMMITTING FRAUD, GROSS NEGLIGENCE OR
MISCONDUCT RELATING TO THE PROVISION OF INTERPRETING
OR TRANSLITERATING SERVICES AS DETERMINED BY THE
OFFICE.**

**(5) ENGAGING IN ANY OTHER MISCONDUCT RELATING TO
THE PROVISION OF INTERPRETING OR TRANSLITERATING
SERVICES AS DETERMINED BY THE OFFICE.**

**(6) VIOLATING THE PROVISIONS OF THE ACT OR THESE
REGULATIONS.**

**§ 501.8. [Request for reconsideration of registration denial]
HEARINGS/APPEALS.**

(a) Actions under sections 8 and 9 of the Act (63 P.S. §§ 1725.8 and 1725.9) AND § 501.7 (RELATING TO VIOLATIONS) will be taken subject to the right of notice, hearing and adjudication in accordance with 2 Pa.C.S. (relating to administrative law and procedure). Hearings shall be conducted under 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) and this section.

(b) The Office will serve the [registrant] **RESPONDENT** with an order to show cause under 1 Pa. Code § 35.14 (relating to orders to show cause). The order to show cause shall contain notification that the registration may be subject to action and the grounds for the action. The order to show cause shall contain notification that the respondent is to respond in writing within 30 days after the date of the service of the order or in accordance with another date designated by the Office. **FAILURE TO RESPOND WILL BE DEEMED A DEFAULT AND RELEVANT FACTS STATED IN THE ORDER TO SHOW CAUSE MAY BE DEEMED ADMITTED UNDER 1 PA. CODE § 35.37 (RELATING TO ANSWERS TO ORDERS TO SHOW CAUSE).**

(c) The [registrant] **RESPONDENT** may respond in writing to the allegations of the order to show cause under 1 Pa. Code § 35.37 (relating to answers to orders to show cause). If made, the answer shall be filed with the Office within 30 days after the date of the order to show cause or within another time period specified by the Office.

(d) The Office will provide the opportunity for a recorded hearing on the allegations. The Office will designate a presiding officer to conduct the hearing under 1 Pa. Code §§ 35.185- 35.190 (relating to presiding officers).

(e) The presiding officer will prepare and issue a proposed report and order under 1 Pa. Code §§ 35.201-35.207 (relating to proposed reports generally). The presiding officer will serve the proposed report upon counsel of record or to the parties in the hearing. The proposed report shall contain the Department address where an appeal may be filed.

(f) A party may appeal the proposed report and order to the Secretary within [20] 30 days of service of the proposed report under section 10 of the Act (63 P.S. § 1725.10). Appeals are governed by all of the following:

(1) A party desiring to appeal to the Secretary shall file exceptions to the proposed report and order within [20] 30 days of service in accordance with 1 Pa. Code § 35.211 (relating to procedure to except to proposed report). The party may seek the reopening of the record to present testimony or evidence by filing a request with the exceptions.

(2) A party may file a written response to the exceptions within 20 days of service of the exceptions. The party may seek the reopening of the record to present testimony or evidence by filing a request with the response.

(3) If a timely appeal is filed, the presiding officer will transmit the proposed report and order and the certified record to the Secretary.

(4) If a timely appeal is filed, the Secretary will issue the final order under 1 Pa. Code § 35.226 (relating to final orders). The Secretary may reopen the record and order additional briefs.

(5) The presiding officer's proposed report and order will be the Department's final order under section 11 of the Act (63 P.S. § 1725.11) if a timely appeal is not made under this section.

(g) This section supplements 1 Pa. Code §§ 35.14, 35.37, 35.185-35.190, 35.201-35.207, 35.211 and 35.226.

§ 501.9. [Biennial registration renewal] REQUEST FOR RECONSIDERATION OF REGISTRATION DENIAL.

(a) The Office may deny an application for registration if an applicant does not meet the registration requirements of section 5(a) of the Act (63 P.S. § 1725.5(a))

or for the grounds contained in section 8(a) of the Act (63 P.S. § 1725.8(a)) **THE OFFICE WILL PROVIDE THE APPLICANT WITH WRITTEN NOTIFICATION OF THE DENIAL WHICH STATES THE STATUTORY AND REGULATORY REASONS FOR THE DENIAL AND SETS FORTH THE PROCEDURE FOR REQUESTING RECONSIDERATION.**

(b) An applicant for registration whose application was denied by the Office may file a request for reconsideration with the Office **WITHIN 30 DAYS OF THE DATE OF THE NOTICE OF DENIAL.**

(c) The request for reconsideration shall be in writing and include all of the following:

(1) **THE [A]Applicant's name and address.**

(2) The facts supporting the applicant's request for reconsideration.

(3) Supporting documentation demonstrating that the applicant meets the requirements for registration under section 5(a)(2) of the Act (**63 P.S. § 1725.5(a)(2)**).

(d) The Office will review the request for reconsideration and issue a written determination containing its decision. If reconsideration is denied, the Office will provide a summary of the reasons in the determination.

(e) If the request is granted, the Office will issue a registration to the applicant if the applicant pays the renewal fee and completes the application under section 5(a)(1) of the Act (**63 P.S. § 1725.5(a)(1)**).

(f) An applicant may seek a hearing and appeal the denial of registration under sections 10 and 11 of the Act (63 P.S. §§ 1725.10, 1725.11). The Office and Department will conduct hearings and resolve appeals under § 501.7 (relating to hearings/appeals).

§ 501.10. [Reactivation of registration] BIENNIAL REGISTRATION RENEWAL.

(a) A registrant shall renew the registration biennially to retain the right to continue to provide interpreting or transliterating services, or offer to provide sign language interpreting or transliterating services, or hold himself out as a qualified sign language interpreter or a qualified transliterator or use similar titles or designations under the Act.

(b) Registration for a biennium expires December 31 of every even-numbered year.

(c) To renew a registration, a registrant shall submit to the office before the expiration of the renewal period a completed renewal application supplied by the Office along with the required renewal fee and any late or reactivation fees under § 501.2 (relating to fees).

(d) Biennial registration forms and other forms or literature to be distributed by the Office shall be forwarded to the last mailing **OR ELECTRONIC** address [given] **PROVIDED** to the Office by the registrant. Failure of the Office to send, or of the registrant to receive, a biennial registration application does not relieve the registrant of the biennial registration responsibility.

(e) The Office shall issue a nontransferable biennial registration to a registrant who renews registration under this section **WITHIN 60 DAYS**.

§ 501.11. [Change of address/name/information] REACTIVATION OF REGISTRATION.

A. An individual may reactivate a suspended registration under section 9(c)(1) of the Act (63 P.S. § 1725.9(c)(1)) if the following **CONDITIONS ARE**[is] met:

(1) The suspension term [certain] has fully elapsed.

(2) The individual has complied with all the terms and conditions of the suspension order.

(3) The individual has not violated the Act or this chapter during the suspension term.

(4) The individual pays the reactivation fee under § 501.2(4) (relating to fees).

(5) The individual complies with the renewal requirements of [Section] § 501.9 (relating to biennial registration renewal).

B. AN INDIVIDUAL MAY OBTAIN REGISTRATION FOLLOWING REVOCATION OF A REGISTRATION UNDER SECTION 9(C)(2) OF THE ACT (63 P.S. § 1725.9(C)(2)) IF THE FOLLOWING CONDITIONS ARE MET:

(1) AT LEAST 5 YEARS ELAPSED FROM THE DATE OF THE REGISTRATION REVOCATION.

(2) THE INDIVIDUAL COMPLIED WITH TERMS AND CONDITIONS OF THE REVOCATION ORDER.

(3) THE INDIVIDUAL DID NOT VIOLATE THE ACT OR THIS CHAPTER DURING THE REVOCATION TERM.

(4) THE INDIVIDUAL PAYS THE REACTIVATION FEE UNDER § 501.2 (RELATING TO FEES).

(5) THE INDIVIDUAL COMPLIES WITH THE REGISTRATION REQUIREMENTS OF SECTION 5 OF THE ACT AND § 501.4 (RELATING TO REGISTRATION).

§ 501.12. CHANGE OF ADDRESS/NAME/INFORMATION.

A registrant shall notify the Office **IN WRITING** of **THE FOLLOWING WITHIN 10 DAYS:**

(1) [a] Any change of name[,] OR mailing address

(2) DISCIPLINARY ACTION TAKEN AGAINST THE REGISTRANT'S REGISTRATION, CERTIFICATION OR LICENSE TO PROVIDE INTERPRETING OR TRANSLITERATING SERVICES BY ANOTHER STATE OR GOVERNMENT AGENCY. [other personal or professional information within 15 days of making the change.]

§ 501.13. CONFIDENTIAL COMMUNICATIONS

EXCEPT AS PROVIDED BY LAW, A SIGN LANGUAGE INTERPRETER WHO ACQUIRES CONFIDENTIAL INFORMATION WHILE INTERPRETING OR TRANSLITERATING MAY NOT BE REQUIRED TO DISCLOSE THE INFORMATION IN ANY LEGAL PROCEEDING, TRIAL OR INVESTIGATION BEFORE A GOVERNMENTAL UNIT WITHOUT THE CONSENT OF THE INDIVIDUAL RECEIVING INTERPRETING OR TRANSLITERATING SERVICES. THE SIGN LANGUAGE INTERPRETER SHALL HOLD ANY LEGAL PRIVILEGE THAT THE INDIVIDUAL RECEIVING THE SERVICES HOLDS.

Interpreters and Transliterators, No 12-71
Stakeholder List

1. Pennsylvania Academy of Otolaryngology – Head and Neck Surgery
Robert T. Sataloff, MD, FACS
777 East Park Drive
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2. Rachel B. Coppelli CI & CT
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National Registry of Interpreters for the Deaf
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INDEPENDENT REGULATORY
REVIEW COMMISSION

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10. Dr. Jeffrey A. Weber, Secretary
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September 15, 2008

The Honorable Arthur Coccodrilli, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Final-Form Regulation #12-71 (IRRC #2556)
Department of Labor and Industry
Registration of Sign Language Interpreters and Transliterators

INDEPENDENT REGULATORY
REVIEW COMMISSION

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Dear Chairman Coccodrilli:

Enclosed is the report of the Department of Labor and Industry prepared in accordance with section 7(c) of the Regulatory Review Act, 71 P.S. § 745.7(c), following disapproval of the above referenced final-form regulation by the Independent Regulatory Review Commission. The report includes the Department's revised final-form regulation and resubmits the regulation for approval in accordance with the Regulatory Review Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandi Vito".

Sandi Vito
Acting Secretary

Enclosures

cc: Jane C. Pomerantz, Chief Counsel
Neil E. Cashman, Jr., Senior Advisor for External Affairs
Andrea Mead, Director of Policy
Neil Malady, Director, Office of Legislative Affairs
Sharon Behun, Director, ODHH
Catherine N. Wojciechowski, Deputy Chief Counsel



TRANSMITTAL SHEET FOR REPORT PURSUANT TO SECTION 7(b) and 7(c)
OF THE REGULATORY REVIEW ACT

I.D. NUMBER: 12-71

SUBJECT: Registration of Sign Language Interpreters and Translitterators

PA CODE: 34 Pa. Code Chapter 501

AGENCY: Department of Labor and Industry

INDEPENDENT REGULATORY
REVIEW COMMISSION

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TYPE OF REPORT

- Agency Report contains final-form regulation **without revision**, the findings of the Commission and agency response and recommendation pursuant to Section 7(b) of the Regulatory Review Act.
- Agency Report contains the **revised** final-form regulation, the findings of the Commission and agency response and recommendation pursuant to Section 7(c) of the Regulatory Review Act.

FILING OF REPORT

DATE	SIGNATURE	DESIGNATION
9/15/08	<i>Maryann Eckhart</i>	HOUSE COMMITTEE: on Labor Relations Majority Chair Robert E. Belfanti
9/15/08	<i>Paul Russo</i>	Minority Chair Gene DiGirolamo
9/15	<i>Emilio Restagno</i>	SENATE COMMITTEE: on Labor and Industry Majority Chair John R. Gordner
9/15	<i>Dan Lu</i>	Minority Chair Christine M. Tartaglione
9/15/08	<i>Robert M. ...</i>	INDEPENDENT REGULATORY REVIEW COMMISSION

September 12, 2008